



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

Ms. Cindy L. Becker
Lloyd, Gosselink, Blevins, Rochelle,
Baldwin & Townsend, P.C.
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR98-1081

Dear Ms. Becker:

On behalf of the Hays Consolidated Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115147.

The school district received a request for

tests, surveys, evaluation or reports of the air or building materials, or mold levels or any other contaminants or chemicals or substances in the air or on any building materials or surfaces, or furniture or furnishings of any nature related to Tom Green Elementary School within the past several months by Mycotech Biological, Inc. or any other person, firm or governmental agency consulted by the Board, and any correspondence or requests or reports related to any such tests or surveys.

You state that the school district has released certain information to the requestor. You assert that portions of the requested information is excepted from required public disclosure based on sections 552.103 and 552.107(1) of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

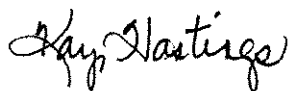
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may be withheld.

If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Furthermore, the school district may not withhold from public disclosure information that has been publicly disseminated. Moreover, the minutes of an open meeting conducted pursuant to the Open Meetings Act, chapter 551 of the Government Code, are made public by statute. Gov't Code § 551.021. In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As we resolve this matter based on section 552.103, we need not address your section 552.107(1) claim at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115147

Enclosures: Submitted documents

cc: Mr. Earl H. Staelin
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(w/o enclosures)